IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18444 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAGHUVIR INDUBHAI PATEL - Petitioner(s)

Versus

SECRETARY,REVENUE DEPARTMENT & 3 - Respondent(s)

==========

Appearance :

MR RAJESH K SHAH for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2, 4,
MR MRUGEN K PUROHIT for Respondent(s) : 3,
MR AMIT V THAKKAR for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgement and order passed by the Additional Secretary (appeals) Revenue Department, State of Gujarat dtd.12/7/205 in Revision Application Noo.6 f 2005 in dismissing the same and confirming thee order passed by the Collector dtd.21/6/2004 in RTS/RA/Suo-motu Revision Application NO.6 of 2004 in quashing and setting aside the Mutation respect to the land bearing Survey No.745 Paiki.

2.The dispute is with regard to the Mutation Entry No.5796 dtd.16/4/1993 with respect to the land bearing 745 Paiki ad-measuring 0.09.12 RA of village Killadar Party. The name of the

petitioner was mutated in the revenue record with respect to the aforesaid land. The Mutation Entry No.5796 dtd.16/4/1993 which came to be certified on 24/5/1993. It appears that the said entry was mutated on the basis of Hissa Form. A report was submitted to Collector that the name of the petitioner was mutated in the said revenue record wrongly and on the basis of the report by the Land Records, Kheda, the Collector Kheda took the aforesaid entry in the *suo-motu* revision application and after giving an opportunity to the petitioner as well as the contesting respondents, set aside the Mutation Entry No.5796 by his order dtd.21/6/2004. Being aggrieved and dissatisfied with the order passed by the Collector, Kheda dtd.21/6/2004 in *Suo-Motu* Revision Application No.6 of 2004, the petitioner preferred a Revision Application before the Addl.Secretary (Appeals), Revenue Department, State of Gujarat being Revision

Application No.6 of 2004 and in view of the fact that Regular Civil Suit NO. 346 / 2003 pending in the court of learned Civil Judge (JD) between the parties, while dismissing the aforesaid revision application and confirming the order passed by the Collector, Kheda dtd.21/6/2004, the Addl.Secretary (Appeals), passed the order directing that the necessary entry can be made on the basis of the judgement and decree that may be passed by the learned Civil Judge (JD), Nadiad. Being aggrieved and dissatisfied with the order passed by the Addl.Secretary (Appeals), Revenue department, State of Gujarat, the petitioner has preferred the present petitioner under Articles 226 and 227 of the Constitution of India.

3.Mr.R.K. Shah, learned advocate appearing on behalf of the petitioner has vehemently submitted that the exercise of the powers by the Collector to quash and set aside the Mutation Entry No.5796 was after unreasonable

period and it was not permissible and therefore, the Addl.Secretary (Appeals) has materially erred in confirming the said order. Mr.Shah has also relied upon the registered sale deed td.6/4/1978 in support of his submission that the respondent has purchased the disputed land in question.

4.On the other hand, Mr.Mrugen Purohit, learned advocate appearing on behalf of the contesting respondents has submitted that the disputed land in question is never sold to the petitioner and the land which was sold to the petitioner is already subsequently sold by the petitioner to third party and so far as the land in question is concerned, the petitioner has no title. It is also further submitted that as such the private respondents are in possession of the land in question and in fact, the petitioner has already filed a Civil suit being Civil Suit No. 346 of 2003 in the Court of learned Civil Judge (SD), Nadiad

for declaration and permanent injunction with respect to the very disputed land in question and the same is pending. He has also further submitted that as such the order passed by the Collector, Kheda dtd.21/6/2004 in Suo-motu Revision Application No.6 of 2004 is already implemented and the name of the petitioner is already deleted and the entry which was there i.e. Mutation Entry No.5796 is already cancelled and therefore, the entry which was prior to mutation of the Entry No.5796 is restored.

5.Heard the learned advocates appearing on behalf of the parties and perused the material placed on record.

6.In the case on hand, the dispute is with regard to Mutation Entry in the revenue record and as held by the Honourable Supreme Court as well as by this Court in catena of judgements, Mutation Entry in the revenue record does not confer any right, title or interest and only on the basis

of the Mutation Entry in the revenue record, nobody can claim ownership. The Mutation Entry is only for fiscal purpose and for collection of revenue. If there is any dispute with regard to the title, the revenue authorities while exercising RTS jurisdiction has no jurisdiction to decide the disputed question of title and the parties are to be relegated to approach the Civil Court for establishing their titles. In the present case, the petitioner's claim to be the owners of the disputed land in question which is disputed by the private respondents and in fact the very petitioner has filed Civil Suit No.346 of 2003 which is pending in the court of learned Civil Judge (SD), Nadiad for declaration and permanent injunction with regard to the land in question and therefore, necessary mutation entry can be made on the basis of that judgement and decree that may be passed by the civil court in the aforesaid civil suit. It is also required to be noted

that as on today, the order passed by the Collector, Kheda in Revision Application No.6 of 2004 is already implemented and the name of the petitioner is already deleted and the entry which was made in the revenue record prior to the Mutation of the Entry No.5796 is restored. Under the circumstances, even an additional entry can be made that there is a civil suit is pending between the parties with respect to the very disputed land in question and such entry is subject to the ultimate outcome of the civil suit pending between the parties. The necessary entry can be made/modified on the basis of the judgement and decree that may be passed by the competent civil court in the aforesaid civil suit. Under the circumstances, while disposing the present petition, it is held and directed to the revenue authorities to make an additional entry in the revenue record that the Civil Suit No.346 of 2003 is pending in the Court of learned Civil Judge (SD), Nadiad and

the said entry is subject to the ultimate outcome of the said Civil Suit NO.346 of 2003, which is pending between the parties in the Court of learned Civil Judge (SD), Nadiad. It is also observed that the necessary entry will be modified on the basis of the judgement and decree that may be passed by the learned Civil Judge (Nadiad) in Civil Suit No.346 of 2003.

7. With the above observations and directions, the present petition stands disposed of.

(M.R. SHAH,J.)

rafik